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TAGS: PINT, SP

SUBJ: CURRENT STATUS OF HUMAN RIGHTS IN SPAIN

REF: STATE 05319; A-51-FEB. 28, 1975

SUMMARY: THE EFFECTIVE EXERCISE OF HUMAN RIGHTS IN SPAIN
HAS UNDERGONE A SIGNIFICANT CHANGE SINCE FRANCO'S DEATH.
THE PRESS IS LARGELY FREE AND POLITICAL PARTIES AND EMBRYO
POLITICAL GROUPS WITH THE EXCEPTION OF THE COMMUNISTS HAVE
BEEN ABLE TO HOLD PUBLIC MEETINGS AND PUBLISH THEIR PROPAGANDA.
ALTHOUGH THERE IS NO RECOGNIZED FREEDOM FOR

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LABOR ORGANIZATION, WORKERS HAVE EXERCISED THEIR DE FACTO,
IF NOT DE JURE, RIGHT TO STRIKE (IN THE PROCESS

BRINGING ABOUT A VERY TROUBLED LABOR-MANAGEMENT-GOVT RELATIONS SCENE). THIS ACTIVITY WOULD NOT HAVE BEEN POSSIBLE WERE IT NOT FOR GOVT ORDERS ENJOINING FORCES OF PUBLIC ORDER TO EXERT RESTRAINT. IN GENERAL, THE POLICE NO LONGER MAKE MASS ARRESTS OF DEMONSTRATORS AND HAVE REFRAINED FROM THE METHODS SOMETIMES USED IN THE PAST. (THE VIOLENCE IN VITORIA- 4 DEATHS - COME FROM A CONFUSED MELEE IN WHICH POLICE AND DEMONSTRATORS ALIKE PANICKED). AS A CONSEQUENCE OF ROYAL PARDON ISSUED WITHIN ONE WEEK OF FRANCO'S DEMISE, OVER 6500 PRISONERS INCLUDING OVER 700 POLITICAL PRISONERS, HAVE BEEN RELEASED. TOTAL PRISON POPULATION WAS 8,440 AT END OF 1975, OUT OF A POPULATION OF 35 MILLION, REPORTEDLY ONE OF LOWEST PER CAPITA LEVELS IN THE WORLD. GOVT HAS SUBSEQUENTLY ISSUED PASSPORTS TO SOME RELEASED POLITICAL PRISONERS AS WELL AS TO SPANISH EXILES OF WHOM OVER 500, INCLUDING RECOGNIZED LEADERS OF POLITICAL OPPOSITION, HAVE RETURNED TO SPAIN. (SPANIARDS HAVE FOR YEARS BEEN FREE TO TRAVEL EITHER TO CHANGE RESIDENCE, TO GET JOBS OR FOR TOURISM.) JUDICIAL SAFEGUARDS, WHICH WERE RESTRICTED BY AUGUST 1975 LAW ON TERRORISM, HAVE BEEN RESTORED WITH THIS LAW'S REVISION. THE GOVT HAS UNDER STUDY A PROPOSAL WHICH WOULD ELIMINATE OVERLAPPING OF MILITARY, ECCLESIASTICAL, AND CIVIL JURISDICTION IN ORDER TO GIVE MORE GUARANTEES TO DUE PROCESS IN CIVILIAN COURTS FOR NON-MILITARY CRIMES. NONE OF THE RELEASED PRISONERS, POLITICAL OR OTHER, HAVE ACCUSED GOS OF MISTREATMENT OR TORTURE DURING THEIR CONFINEMENT; LEADING COMMUNIST LABOR LEADER CAMACHO HAS EVEN STATED PUBLICLY THAT HE WAS NOT MISTREATED. NEW GOVT HAS ALREADY INTRODUCED OR ANNOUNCED PLANS TO INTRODUCE KEY LEGISLATION ON FREEDOM OF ASSEMBLY AND ASSOCIATION WHICH WOULD IMPLEMENT CERTAIN CIVIL RIGHTS INSCRIBED IN SPANISH BILL OF RIGHTS. THIS NEW GOS IS ENGAGED IN PROCESS OF CHANGING CONSTITUTION AND LEGAL STRUCTURE TO GUARANTEE RESPECT FOR THESE BASIC RIGHTS INCLUDING JUDICIAL RECOURSE IN THE LIMITED OFFICIAL USE LIMITED OFFICIAL USE

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ORDINARY COURTS FOR INFRACTIONS. IN CONSIDERED JUDGMENT OF OBSERVERS, SPANISH AND FOREIGN, SPANIARDS ENJOY MORE GENUINE FREEDOM THAN AT ANY TIME IN THE PAST 40 YEARS. END SUMMARY.

1. THE PRESENT CABLE IS A SUMMARY OF AN AIRGRAM RESPONSE TO REFTEL. ADMINISTRATIVE AND REGULATORY RESTRICTIONS HAD LIMITED THE EXERCISE OF SPANISH BASIC FREEDOMS DESCRIBED IN CHARTER OF THE SPANISH PEOPLE ADOPTED IN 1945. EVEN UNDER FRANCO, THERE

WAS AN EVOLUTION, HOWEVER, TO GIVE INCREASING EFFECT TO THESE BASIC FREEDOMS, PARTICULARLY AS SET DOWN IN SEVERAL SPECIFIC LAWS, E.G., LAW OF ASSOCIATIONS (1964), PRESS LAW (1956), AND RELIGIOUS LIBERTY LAW (1957). IN PRACTICE, THERE HAS BEEN VERY LITTLE OR PRACTICALLY NO LIMIT ON SPANIARDS ON FREEDOM OF SPEECH, MOVEMENT, AND OF OPPORTUNITY TO ACCEPT THE EMPLOYMENT OF ONE'S CHOICE. THE LAG HAS BEEN IN THE RECOGNITION OF CIVIL RIGHTS SUCH AS FREEDOM OF ASSEMBLY, ASSOCIATION, AND PUBLICATION. THE FIRST POST-FRANCO GOVT HAS ALREADY GREATLY ATTENUATED THE CONTROLS ON THE EXERCISE OF THESE FREEDOMS AND INTRODUCED OR ANNOUNCED PLANS TO INTRODUCE NEW LEGISLATION WHICH WOULD GUARANTEE THE EXERCISE OF FREEDOM OF ASSEMBLY AND ASSOCIATION.

2. FREEDOM OF ASSEMBLY AND ASSOCIATION. THE PRESENT PENAL CODE ALLOWS THE GOVT TO TAKE PRACTICALLY ANY ACTION TO CONTROL COLLECTIVE ACTIVITIES OF GROUPS OF PEOPLE NUMBERING 20 OR MORE PERSONS. POST-FRANCO PERMISSIVENESS, HOWEVER, HAS ALLOWED POLITICAL PARTIES (EXCEPT THE COMMUNISTS) LEGALLY CONSIDERED AS "ILLCIT ASSOCIATIONS" TO OPERATE OPENLY. UNDER FRANCO, "ILLCIT ASSOCIATION" WAS, TOGETHER WITH TERRORISM, THE MOST COMMON FORM OF SO-CALLED POLITICAL CRIMES. REVISION OF THE PENAL CODES' DESCRIPTION OF ILLICIT ASSOCIATION, AS PROMISED BY GOVT, AND IMPLEMENTING LEGISLATION ON FREEDOM OF ASSEMBLY AND ASSOCIATION WILL PROVIDE DEFINITIVE GUARANTEES IN THIS FIELD OF HUMAN RIGHTS.

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ACTION SS-15

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R 171212Z MAR 76

FM AMEMBASSY MADRID
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3. FREEDOM OF WORSHIP. THE CATHOLIC CHURCH, WHICH IS CONSTITUTIONALLY THE STATE RELIGION, HAS MOVED PROGRESSIVELY AWAY FROM THE FRANCO REGIME WITH WHICH IT WAS CLOSELY IDENTIFIED DURING THE CIVIL WAR. TODAY IT IS IN THE FOREFRONT OF THE MAJOR LIBERALIZING FORCES IN SPAIN AND, INDEED, WAS PARTLY RESPONSIBLE FOR THE ADOPTION OF THE 1967 RELIGIOUS LIBERTY LAW. NON-CATHOLIC SECTS OPERATE OPENLY IN SPAIN AND HAVE NOT BEEN HARRASSED BY THE GOVT OR BY OTHER PRIVATE ORGANIZATIONS. THE CATHOLIC CHURCH ITSELF HAS BECOME A PUBLIC ADVOCATE OF GENUINE FREEDOM OF ASSEMBLY AND ASSOCIATION.

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4. FREEDOM OF EXPRESSION. EVEN UNDER FRANCO THERE WAS A DISTINCTION BETWEEN THE EXERCISE OF INDIVIDUAL EXPRESSION OF OPINION AND PUBLIC EXPRESSION AIMED AT A MASS AUDIENCE. NO ATTEMPT WAS MADE TO INHIBIT INDIVIDUAL EXPRESSION; CENSORSHIP WAS COMMON IN THE MASS MEDIA UP TO THE ADOPTION OF THE PRESS LAW IN 1967. SINCE THEN, THE PROGRESSIVE LOOSENING OF GOVT CONTROLS HAS REACHED THE POINT WHERE IT CAN BE SAID THAT THERE IS SUBSTANTIAL FREEDOM OF THE PRESS IN PRESENT DAY SPAIN. GOVT INTERFERENCE

OR CENSORSHIP IS EXERCISED ONLY IN ISOLATED INSTANCES. AT THE END OF 1974 SPANISH JAILS HELD 55 PRISONERS FOR THE DISTRIBUTION OF ILLEGAL PROPAGANDA, A YEAR LATER THERE WERE ONLY TWO.

5. FREEDOM OF OPPORTUNITY AND MOVEMENT. SPAIN IS ONE OF THE MOST OPEN COUNTRIES IN THE WORLD WITH RESPECT TO FREEDOM OF MOVEMENT FOR FOREIGNERS AS WELL AS FOR ITS OWN CITIZENS. THE LARGEST VOLUME OF TOURISM TO ANY COUNTRY IN THE WORLD, OVER THIRTY MILLION VISITORS, CAME TO SPAIN IN 1975; THE SAME YEAR OVER SIX MILLION SPANIARDS TRAVELED ABROAD. THE FRANCO PRACTICE OF IMPOSING SO-CALLED "PARALLEL SANCTIONS" SUCH AS THE NON-ISSUANCE OF PASSPORTS TO UNDERSIRABLE POLITICAL PERSONALITIES HAS BEEN DROPPED BY THE NEW GOVT. IT HAS EVEN ISSUED PASSPORTS TO POLITICAL OPPONENTS RELEASED FROM PRISON IN THE ROYAL PARDON AND TO POLITICAL EXILES. THERE ARE NO RESTRICTIONS WHATSOEVER ON THE MOVEMENT OF SPANIARDS TO CHANGE RESIDENCE OR JOBS. FREEDOM OF OPPORTUNITY AND MOVEMENT HAS BEEN A KEY FACTOR IN THE FAST INDUSTRIAL DEVELOPMENT OF SPAIN IN THE PAST DECADES.

6. THE RIGHT TO STRIKE. THE GOVT RECOGNIZED FOR THE FIRST TIME THE RIGHT TO STRIKE IN A LAW ADOPTED IN MAY 1975. ALTHOUGH SEVERELY LIMITED, IT AUTHORIZES STRIKES FOR CLEARLY ECONOMIC ISSUES. BUT SINCE FRANCO'S DEPARTURE, PARTICULARLY IN JANUARY/FEBRUARY 1976, "ILLEGAL" STRIKES HAVE BECOME INCREASINGLY COMMON AND TOLERATED. LIMITED OFFICIAL USE

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ALTHOUGH CLANDESTINE LABOR ORGANIZATIONS HAVE BEEN RESPONSIBLE FOR MOST OF THESE STRIKES, THE GOVT HAS NOT CARRIED OUT WHOLESALE ARRESTS OF THEIR LEADERS OR UNDERTAKEN THE TYPE OF REPRESSION AGAINST THEM OR DEMONSTRATIONS AS WERE PRACTICED UNDER FRANCO. STRIKES IN VITORIA IN EARLY MARCH 1976, HOWEVER, LED TO THREE WORKER DEATHS WHICH WERE PRIMARILY THE RESULT OF A TEMPORARY BREAKDOWN OF LAW AND ORDER WHICH THE PRESENT GOVT HAS PLEDGED ITSELF TO DEFEND.

7. FREEDOM FROM ARBITRARY ARREST AND DETENTION. ARBITRARY ARREST AND DETENTION, WHICH WAS PRACTICED FROM TIME TO TIME UNDER FRANCO, HAS BEEN DISCARDED AS A POLITICAL POLICY BY THE PRESENT GOVT. ILLEGAL DEMONSTRATORS HAVE BEEN TEMPORARILY HELD BUT RELEASED WITHIN A MATTER OF HOURS. GOVT INTENTIONS IN THIS RESPECT ARE EVIDENT IN THE REVISIONS ADOPTED IN FEBRUARY 1976 RESTORING JUDICIARY SAFEGUARDS WHICH HAD BEEN VIOLATED BY THE AUGUST 1975 LAW

ON TERRORISM. THIS IS THE FIRST OF A NUMBER OF JUDICIAL REFORMS, INCLUDING REVISION OF THE PENAL CODE, PROMISED BY THE NEW GOVT.

8. POLITICAL CRIMES AND POLITICAL PRISONERS. THE NUMBER OF POLITICAL PRISONERS IN SPAIN HAS DECLINED FROM A REPORTED LEVEL OF 1,176 AS OF JANUARY 1, 1975 TO 468 AS OF MARCH 1, 1976. BE RELEASEING THE NATIONAL LEADER OF THE WORKERS COMMISSIONS, MARCELINO CAMACHO, THE NEW GOVT INDICATED ITS EARNEST IN CARRYING OUT A GENUINE POLITICAL PARDON. THE MINISTER OF INTERIOR HAS SAID THAT THEIR NUMBER WILL BE HALVED AGAIN BY MID-1976 BUT THAT A HARD CORE OF APPROX 200 TERRORISTS WOULD BE KEPT BEHIND BARS. MOST OF THE 136 PERSONS CURRENTLY HELD FOR "ILLEGAL ASSOCIATION" ARE EXPECTED TO BE RELEASED SHORTLY.

9. FAIRNESS OF TRIALS. SPAIN'S JUDGES ARE PROMOTED ON A STRICT MERIT SYSTEM AND ENJOY THE PROTECTION OF TENURE GIVING THEM CONSIDERABLE INDEPENDENCE. PROCEDURAL SAFEGUARDS ARE COMPARABLE TO ANGLO-SAXON PRACTICE, E.G. , ONLY CONFESSIONS MADE BEFORE A JUDGE ARE ADMISSIBLE IN CRIMINAL TRIALS. GOVT PROSECUTIONS, EVEN IN POLITICAL OFFENSES, OFTEN FAIL IN COURT. THE REAL PROBLEM STEMS LIMITED OFFICIAL USE

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FROM THE OVERLAPPING JURISDICTIONS: MILITARY, CIVIL, AND ECCLESIASTICAL. UNDER PRESSURE FROM THE NATIONAL BAR ASSOCIATION AND OTHERS, THE GOVT HAS PROMISED TO ELIMINATE "SPECIAL JURISDICTIONS" AND TO MAKE CIVIL JURISDICTION TOTALLY INDEPENDENT OF MILITARY JURISDICTION.

10. TREATMENT OF DETAINEES AND PRISON CONDITIONS. SPANISH LAWS PROHIBIT MISTREATMENT OF PRISONERS. POLICE-MEN HAVE BEEN CONVICTED AND SENTENCED BY THE COURTS FOR SUCH MISTREATMENT. THESE SENTENCES HAVE HAD A SALUTORY EFFECT IN INDUCING THE POLICE TO DESIST FROM PRACTICES WHICH OCCURRED IN ISOLATED INSTANCES UNDER THE FRANCO REGIME. THERE IS AN ABSENCE OF ANY PUBLIC ACCUSATIONS BY ANY OF THE OVER 6,500 RELEASED PRISONERS, INCLUDING POLITICAL PRISONERS, WHO HAVE BEEN FREE TO MAKE ACCUSATIONS AGAINST THE GOS EITHER IN SPAIN OR ABROAD. MARCELINO CAMACHO HIMSELF HAS ACKNOWLEDGED THAT HE WAS NOT MISTREATED IN JAIL. NOTWITHSTANDING THIS EVIDENCE, HOWEVER, IT IS LIKELY THAT IN CASES INVOLVING ACCUSED TERRORISTS, THE FRANCO-ERA POLICE DID AT TIMES INDULGE IN PSYCHOLOGICAL AND PHYSICAL COERCION.

11. PRISON CONDITIONS. OWING TO THE PRESENCE OF AMERICAN CIVILIAN AND MILITARY PRISONERS IN SPANISH JAILS, THE EMBASSY HAS BECOME FAMILIAR WITH CONFINEMENT CONDITIONS.

SPANISH PRISONS MEET BASIC STANDARDS OF ACCEPTABILITY.
EVEN POLITICAL PRISONERS ARE ABLE TO TAKE ADVANTAGE
OF THE SPANISH LAWS' PROVISION WHEREBY 30 DAYS OF WORK
REDUCES A PRISONER'S SENTENCE BY 60 DAYS. INDEED, AT
PRESENT 12 PRISONERS CONVICTED ON POLITICAL CHARGES
REGULARLY RETURN TO PRISON EACH NIGHT AFTER WORKING ON
REGULAR CIVILIAN JOBS IN THE CITY.
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